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January 16, 2007

FILED ELECTRONICALLY AND ORIGINAL VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk
South Carolina Public Service Commission
Saluda Building, Synergy Business Park
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RE: Application of Wyboo Plantation Utilities, Inc. for Approval of New
Schedule of Rates and Charges for Water and Sewer Services
Docket No. 2005-13-WS, ELS File No. 1015-10306

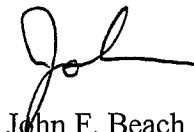
Dear Mr. Terreni:

Enclosed for filing please find the original and one copy (1) copy of **Wyboo Opposition to Bruffey Petition to Intervene Out of Time** for filing on behalf of Wyboo Plantation Utilities, Inc. in the above-referenced docket. By copy of this letter, I am serving all parties of record in this proceeding and enclose my certificate of service to that effect.

Please stamp "received" the additional copy of this letter, and return in the enclosed envelope.

With kind regards, I am

Yours truly,



John F. Beach

JB/cr

Attachments

cc: Belton T. Zeigler, Esquire
all parties of record
Mr. Mark Wrigley

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2005-13-W/S

IN RE:

Application of Wyboo Plantation
Utilities, Inc. for adjustment of rates and
charges for the provision of water and
sewer service

)
)
) **WYBOO OPPOSITION TO**
) **BRUFFEY PETITION TO INTERVENE**
) **OUT OF TIME**
)
)

Wyboo Plantation Utility, Inc. ("Wyboo") hereby opposes the petition to intervene out of time filed on January 12, 2007 by John C. Bruffey, Jr. and Deer Creek Plantation Properties, Incorporated (collectively, "Bruffey").

1. Wyboo initially filed this application for rate relief on or about January 7, 2005. The Commission assigned Docket No. 2005-13-W/S. After withdrawing the application, Wyboo refiled the present application on or about August 17, 2006.

2. Pursuant to the Commission's instructions, Wyboo notified its customers of the rate application, and the Commission set *September 29, 2006* as the deadline for parties to intervene in this proceeding.

3. On *January 11, 2007*, fewer than 5 business days before the currently-scheduled hearing, Bruffey filed their petition to intervene out of time in this proceeding.

I. Bruffey's Petition to Intervene Must be Denied Because it is Too Far Out of Time.

4. As an initial but decisive matter, Bruffey's petition to intervene simply comes too late. Bruffey has been in contact with individuals who are currently represented in this proceeding

throughout the pendency of this matter. Wyboo is informed and believes that Bruffey has known about this rate proceeding since it was originally filed in August of last year. Bruffey conspicuously offers no justification for his failure to intervene in this proceeding by the return date set by the Commission.

5. Bruffey suggests that he did not know of Wyboo's proposed terms to extend its service until November 22, 2006, when he received the letter that is Exhibit C to Bruffey's petition. Even if that is true, at the very latest, the time for Bruffey to intervene in this proceeding would have been upon his receipt of that letter, or soon thereafter. Instead, Bruffey delayed, for more than seven weeks.

6. When Bruffey received the November 22, 2006 letter, the hearing in this matter was set for ***December 13, 2006***. Bruffey let that date pass without intervention. The Commission then reset the hearing to occur on ***January 9, 2007***. Bruffey also let that date pass without intervention. Bruffey's petition would require the Commission to approve his intervention after two previously set hearing dates have passed, and *less than three business days before the third scheduling of this hearing*. Bruffey has offered no justification for this crucial seven-week delay.

7. Bruffey's intervention at this time would be extremely disruptive to the proceeding. Bruffey requests that the Commission allow him to "present witnesses, arguments, and cross examine witnesses." At this stage the parties have fully prepared for this hearing, based upon witness testimony filed many months ago. It would be prejudicial to the parties legitimately involved in this proceeding to be forced to react to Bruffey's testimony and positions on what would likely amount to zero days notice. The Commission should deny Bruffey's petition to intervene, filed as it is on the very eve of the third scheduled hearing date.

II. Bruffey Lacks Standing to Intervene Because 1) the 69 Lots are Outside of Wyboo's Service Area and 2) Neither Bruffey nor his Entity Owns the 69 Lots .

8. Contrary to Bruffey's assertions, the 69 lots at issue are not in Wyboo's certificated service area. The Commission set Wyboo's current service area in Docket No. 96-227-W. The service area approved by the Commission in that docket clearly does not include any of the 69 lots identified by Bruffey. Bruffey's assertions to the contrary are based solely upon letters between Wyboo and Clarendon County, which are wholly irrelevant. Clarendon County has no authority over the Commission or its geographic service areas for water and sewer utilities. Those decisions and designations are solely within the Commission's jurisdiction, and are unrelated to County franchising matters. Notably, Bruffey's allegations regarding Wyboo's certificated service area are devoid of any reference to the Commission's rulings. The straightforward reason for this absence is that the Commission, which has exclusive jurisdiction over this issue, has never included these 69 lots in Wyboo's approved geographic service area.

9. Even if the 69 lots *were* in Wyboo's certificated service area, neither Bruffey nor Bruffey's company owns title to those lots. **Exhibit A** is the Title to Real Estate through which Bruffey passed ownership of the 69 lots from Deercreek Plantation Properties, Inc. to Our Town Development, LLC, an LLC in which Bruffey has no ownership interest. This transfer occurred on December 21, 2006. As soon as Wyboo learned of the transfer, it communicated with principals of Our Town Development regarding interconnection of the 69 lots, and is presently working with them towards interconnection. Wyboo also immediately notified Bruffey of this fact. *Wyboo cannot negotiate an interconnection with these two functionally - separate parties.* Since title to the 69 lots is clearly in Our Town Development, LLC, Wyboo believes that it must negotiate with that entity for the interconnection and service.

III. The Commission Does not Exercise Power or Control Over Negotiations for the Extension of a Water and Sewer Utility's System to Serve Potential New Customers

10. Wyboo respectfully believes that the Commission does not have jurisdiction over Wyboo's private negotiations to extend service to new customers. At the very least, the Commission never has exercised control over such negotiations. Indeed, the Commission's rules contemplate and approve of Wyboo's' private negotiations in this case. Commission Rule 103-702.15 fully supports this, stating that a "Customer Contribution in Aid of Construction" is "a fee paid by a customer *under a contract entered into by and between the utility and its customers* providing terms for the extension of the utility's mains to serve the customer." [emphasis added] Likewise, Commission Rule 103-502.12 supports this concept when it states that a "Customer Main Extension Fee" is "A fee paid by a customer *under a contract entered into by and between the utility and its customer* providing terms for the extension of the utility's mains to service the customers."

11. Wyboo does not necessarily feel that Commission Rule 103-541 requires Commission approval of contracts utilities reach with developers to extend their systems. Such extensions are likely considered as part of Commission proceedings to extend the utilities' service areas. Regardless, any contract review would be premature in the present instance, as there is no contract between Wyboo and the owner of the 69 lots.

11. Thus, Wyboo is proceeding as all other utilities do, and as envisioned by the Commission's Rules and Regulations, by attempting to reach an agreement with the owner of the 69 lots through which it will extend its water and sewer systems.

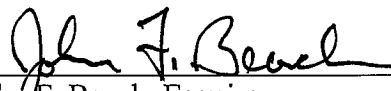
IV. Conclusion

12. The 69 lots do not presently receive water or sewer service from Wyboo, and may *never* receive water and sewer service from Wyboo. Many practical, contractual, and regulatory hurdles must be cleared before there are any “customers” of Wyboo within the 69-lot development. DHEC must approve water and sewer infrastructure within the new development. The owner must construct the water and sewer infrastructure. Both Wyboo and DHEC must approve the constructed facilities. The owner must turn over ownership of that infrastructure and all associated easements to Wyboo. The Commission must approve an expansion of Wyboo’s service area to include the development. The owner must sell a lot to an individual. The individual must decide to construct a house and then request that the house be connected to the Wyboo system. Many of these steps are outside of both the owner’s and Wyboo’s control.

13. For these reasons Wyboo requests that the Commission deny Bruffey’s petition to intervene out of time.

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.



John F. Beach, Esquire
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P) 803/343-1269
E) jbeach@ellislawhorne.com
Attorneys for Wyboo Plantation Utilities, Inc.

January 16, 2007
Columbia, South Carolina

Exhibit A

Prepared by: **Johnson, McKenzie & Robinson, LLC**
William H. Johnson/whj
2 N. Brooks Street
Manning, SC 29102
(803) 435-0909 (803) 435-2858 fax

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF CLARENDON)

KNOW ALL MEN BY THESE PRESENTS, That **Deercreek Plantation Properties, Inc.**, (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of Five and no/100ths (\$5.00) Dollars and other consideration to the Grantor paid by **Our Town Development, LLC, 2538 Players Course Drive, Manning, SC 29102**, (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns forever, the following described property to wit:

See legal description attached hereto consisting of one (1) typewritten page.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, **Our Town Development, LLC**, its successors and assigns forever.

And the Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against the Grantor and the Grantor's Successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 21st day of December in the year of our Lord two thousand six and in the two hundredth and thirty-first year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF

First witness signs

Notary signs

DEERCREEK PLANTATION
PROPERTIES, INC.

BY:

John C. Bruffey, Jr., President

STATE OF GEORGIA)
Notary Public, Cobb County, Georgia)
My Commission Expires February 23, 2008)
COUNTY OF _____)

PERSONALLY APPEARED BEFORE ME the undersigned witness, who, being duly sworn, says that s/he saw the within named Grantor, sign, seal and, as its act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN TO BEFORE ME this
21st day of December, 2006.

Notary Public for

My Commission Expires February 23, 2008

First witness signs again

F:\Brenda\2006\Real Estate\06-708 Deercreek to Our Town\Deed.wpd

000120984 B:A0643 F100225

Exhibit A**Deercreek Plantation Properties to Our Town Development, LLC**

All that certain, pieces, parcels, or tracts of land, lying, being, and situate in Clarendon County, South Carolina, consisting of 12.03 acres, 18.16 acres, .05 acre, .45 acre, .28 acre, and .20 acre, and being designated as Tracts 3, 4, 10, 13, 14, and 15 as shown on that certain plat prepared by Robert G. Mathis Land Surveying dated December 14, 1999 through August 25, 2005 and recorded in the Office of the Register of Deeds for Clarendon County in Plat Cabinet E, Slide 1033 at Plat 3.

This being a portion of the same premises conveyed to Deercreek Plantation Properties, Inc. by deed of Villas III, LLC dated September 9, 2005 and recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-587 at Page 66, and by Corrective Deed dated February 28, 2006, and recorded in Deed Book A-617 at page 175.

SUBJECT to restrictions and easements recorded in the RMC Office for Clarendon County if any, affecting subject lots.

ALSO SUBJECT TO an easement for ingress and egress for access to adjoining property owned by the Grantor over and across all roads constructed upon the property.

000120984
FILED, RECORDED, INDEXED
12/28/2006 03:29:57PM
Bk: A0643 Ps: 00284
Rec Fee: 10.00 St Fee: 5418.40
Co Conv Fee: 2292.40 Pages: 4
R M C DEPARTMENT CLARENDON CO
Paula G. Roberts, Clerk of Court

F:\Brenda\2006\Real Estate\06-708 Deercreek to Our Town\Deed.wpd

000120984 B: A0643 P: 00284

AFFIDAVIT

1. I have read the information on this affidavit and I understand such information.

3. Check one of the following. The deed is:

- (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$7,710.80

- I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

William H. Johnson
Print or Type Name Here

My Commission Expires _____

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-13-W/S**

IN RE:

Application of Wyboo Plantation
Utilities, Inc. for adjustment of rates and
charges for the provision of water and
sewer service

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Wyboo Opposition to Bruffey Petition to Intervene Out of Time** via electronic mail service and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

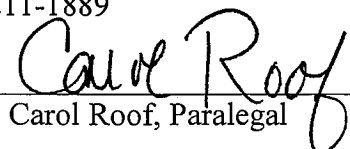
Jocelyn G. Boyd, Esquire, Hearing Officer
South Carolina Public Service Commission
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PO Box 11889
Columbia SC 29211-1889


Carol Roof, Paralegal

January 16, 2007
Columbia, South Carolina